

Ordinance No. 16793-1-2006

AN ORDINANCE INCREASING APPROPRIATIONS IN THE CULTURE AND TOURISM FUND IN THE AMOUNT OF \$2,300,000 AND DECREASING THE UNRESERVED FUND BALANCE BY THE SAME AMOUNT, FOR THE PURPOSE OF TRANSFERRING SAID FUNDS TO THE SPECIALLY FUNDED CAPITAL PROJECTS FUND FOR AN AMENDED AND RESTATED ECONOMIC DEVELOPMENT PROGRAM AGREEMENT WITH OMNI FORT WORTH PARTNERSHIP, L.P. PERTAINING TO THE DEVELOPMENT OF A CONVENTION CENTER HEADQUARTERS HOTEL; MAKING THIS ORDINANCE CUMULATIVE OF PRIOR ORDINANCES IN CONFLICT HERewith; AND PROVIDING AN EFFECTIVE DATE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF FORT WORTH, TEXAS:

SECTION 1.

That in addition to those amounts allocated to the various City departments for Fiscal Year 2005-2006 in the Budget of the City Manager, there shall also be increased appropriations in the Culture and Tourism Fund in the amount of \$2,300,000 and decreasing the unreserved fund balance by the same amount, for the purpose of transferring said funds to the Specially Funded Capital Projects Fund for an Amended and Restated Economic Development Program Agreement with Omni Fort Worth Partnership, L.P. pertaining to the development of a Convention Center headquarters hotel.

SECTION 2.

That should any portion, section or part of a section of this ordinance be declared invalid, inoperative or void for any reason by a court of competent jurisdiction, such decision, opinion or judgment shall in no way impair the remaining portions, sections, or parts of sections of this ordinance, which said remaining provisions shall be and remain in full force and effect.

SECTION 3.

That this ordinance shall be cumulative of Ordinance No. 16582 and all other ordinances and appropriations amending the same except in those instances where the provisions of this ordinance are in direct conflict with such other ordinances and appropriations, in which instance said conflicting provisions of said prior ordinances and appropriations are hereby expressly repealed.

SECTION 4.

This ordinance shall take effect upon adoption.

APPROVED AS TO FORM AND LEGALITY:

  
Assistant City Attorney

ADOPTED AND EFFECTIVE: January 24, 2006

**City of Fort Worth, Texas**  
**Mayor and Council Communication**

---

**COUNCIL ACTION: Approved on 1/24/2006 - Ordinance No. 16793-1-2006 & 16794-1-2006**

---

**DATE:** Tuesday, January 24, 2006

**LOG NAME:** 17OMNI EDPA

**REFERENCE NO.: C-21273**

**SUBJECT:**

Authorize Execution of Amended and Restated Economic Development Program Agreement with Omni Fort Worth Partnership, L.P. Pertaining to Development of Convention Center Headquarters Hotel; Adopt Supplemental Appropriation Ordinances; and Authorize Transfer of Funds

---

**RECOMMENDATION:**

It is recommended that the City Council:

1. Make the findings specifically set forth in the attached Amended and Restated Economic Development Program Agreement;
2. Authorize the City Manager to execute an Amended and Restated Economic Development Program Agreement with Omni Fort Worth Partnership, L.P. pertaining to the development of a Convention Center headquarters hotel;
3. Adopt the attached supplemental appropriation ordinance increasing appropriations in the Culture and Tourism Fund by \$2,300,000 and decreasing the unreserved fund balance by the same amount;
4. Authorize the transfer of \$2,300,000 from the Culture and Tourism Fund to the Specially Funded Capital Projects Fund; and
5. Adopt the attached appropriation ordinance increasing estimated receipts and appropriations in the Specially Funded Capital Projects Fund by \$2,300,000 from available funds.

**DISCUSSION:**

On April 27, 2005 the City and Omni Fort Worth Partnership, L.P. (Omni) executed numerous documents relating to Omni's development of a headquarters hotel for the Fort Worth Convention Center (City Secretary Contract No. 31734, as amended by City Secretary Contract No. 32921). One of those documents was an Economic Development Program Agreement authorized by Chapter 380 of the Texas Local Government Code (the Original 380 Agreement). Pursuant to the Original 380 Agreement, the City agreed to pay Omni annual grants over a 10-year period based on City hotel occupancy and sales taxes and State hotel occupancy and sales taxes rebated by the State to the City in accordance with State law, with contingency grants paid after the 10th year in the event that a subsequent change in law caused a reduction in the anticipated grant amounts. These grants would be contingent on Omni's completing the hotel and complying with construction spending, employment and annual supply and service spending requirements. In addition, the City would pay Omni grants based on rent paid by Omni to the City for the land on which the hotel would be located and the purchase price of that property upon exercise of an option for Omni to buy the property from the City. Finally, the City would pay Omni a grant to help offset costs associated with construction of an underground parking garage and with making the land "pad ready."

Due to construction costs for this project that will be higher than originally anticipated, it is recommended

that the City and Omni enter into the attached Amended and Restated Economic Development Program Agreement (the Amended 380 Agreement). The Amended 380 Agreement will supersede the Original 380 Agreement. Below is a detailed comparison of the Original 380 Agreement and the Amended 380 Agreement, outlining the project, the grants that the City will pay to Omni and the commitments that Omni must meet in order to receive the full amount of those grants.

## **PROJECT OVERVIEW**

This project originated when Omni responded to a Request for Proposal issued by the City in 2003 with regard to the development of a headquarters hotel for the Fort Worth Convention Center. Omni still proposes to construct a full-service hotel on two tracts of land owned by the City and located directly to the west of the Convention Center. The hotel will still have approximately 600 rooms, two full-service restaurants, a lobby bar, approximately 48,000 square feet of dedicated meeting space and other supporting facilities commensurate with a full-service convention center hotel. Whereas under the Original 380 Agreement, Omni had an option to construct residential condominiums or apartments on top of the hotel, the Amended 380 Agreement will *require* that at least 125,000 square feet of residential condominiums be constructed on top of the hotel.

The City has been involved in the design and specifications of the project, which will blend in with the Convention Center and downtown Fort Worth in general, in terms of exterior materials, yet stand out as a landmark in the southern end of downtown and serve as a catalyst for additional development along the Lancaster Corridor. Under the Original 380 Agreement, Omni committed to spend at least \$59,360,000 in hard construction costs for the hotel and hotel parking garage and for TRT Holdings, Inc., Omni's ultimate parent company, to provide the City, within 8 months of the effective date (subsequently extended to January 31, 2006), a guaranty that the hotel and hotel parking garage would be completed. Under the Amended 380 Agreement, Omni has committed to expend at least \$100 million on the project and has agreed that by January 31, 2006 TRT Holdings, Inc. will provide the City a guaranty that the project will be completed. Omni will still have the right to lease retail space in a newly constructed parking garage owned by the City and located directly to the north of the Hotel property and, with certain exceptions, will have an exclusive right to provide catering services at the Convention Center.

## **OMNI COMMITMENTS**

As part of this project, Omni has made the following commitments:

- Construction Spending. Under the Original 380 Agreement, Omni committed to spend the lesser of \$11,872,000 or 20% of hard construction costs for the hotel and hotel parking garage with Fort Worth companies and the lesser of \$5,936,000 or 10% of hard construction costs with Fort Worth M/WBE companies. Under the Amended 380 Agreement, Omni has committed to spend a minimum of \$20 million in hard construction costs for the project with Fort Worth companies and \$15,000,000 with Fort Worth M/WBE companies. Expenditures with Fort Worth M/WBE companies will still count toward the commitment for spending with Fort Worth companies. If Omni fails to meet any of these commitments, the City will still receive a credit toward its obligation to pay certain economic development grants (as outlined below) equal to the number of dollars by which the commitments were not met.

- Employment. Omni's employment commitments under the Original 380 Agreement will remain the same under the Amended 380 Agreement. Omni annually will provide at least 250 full-time equivalent jobs (FTEs) in the hotel and hotel garage, of which at least 125 must be residents of the City of Fort Worth and 62 must be residents of the Central City. Jobs provided to residents of the Central City will also count as jobs provided to residents of the City of Fort Worth. If Omni fails to meet any of these commitments, Omni will pay the City \$4,500 for each FTE below the 250 overall commitment; \$4,500 for each FTE below the 125 City of Fort Worth commitment; and \$9,000 for each FTE below the 62 Central City commitment. All such payments will be used to fund a job-training program at the hotel.

- Supply and Service Spending. Omni's annual supply and service commitments under the Original 380

Agreement will remain the same under the Amended 380 Agreement. Omni will spend at least \$100,000 per year with Fort Worth companies and at least \$50,000 per year with Fort Worth M/WBE companies in discretionary supplies and services for the hotel and hotel garage. Spending with Fort Worth M/WBE companies shall also count toward the spending commitment for Fort Worth companies. If Omni fails to meet any of these commitments, the city may deduct three times the number of dollars by which Omni failed to meet the commitments from future payments of certain economic development grants (as outlined below).

- Operating Standards Omni will still be required to operate the hotel in accordance with those operating standards attributable to a 3-star/4-diamond hotel. If Omni fails to continue operating the hotel at such standards after a 1-year notice and cure period, the City may suspend payment of certain economic development grants (as outlined below) until Omni has resumed operating the hotel at such standards. As explained below, the term of the Amended 380 Agreement is anticipated to be 18 years rather than 10 years, as was anticipated under the Original 380 Agreement. Accordingly, the City will have the right to enforce operating standards at the hotel for up to 8 additional years.

### **CITY INCENTIVES**

In return for the economic benefits, increased employment and commercial stimulation that the City of Fort Worth is anticipated to receive from the hotel in the form of increased Convention Center bookings, additional tourism and private development around the hotel site, the City will pay Omni various economic development grants authorized by Chapter 380 of the Texas Local Government Code and in accordance with the City's Chapter 380 Economic Development Program previously approved by the City Council, as follows:

- Completion Grants. Under the Original 380 Agreement, the City is required to pay Omni monthly grants equal to 50% of the hard construction costs expended by Omni in the previous month until Omni has received \$6.3 million. The Amended 380 Agreement will retain this requirement and, additionally, require the City to pay Omni a grant of \$2.3 million once the project has been completed.

- Incentive Grants.

Under the Original 380 Agreement, once the hotel opens and for 10 years thereafter, the City is required to pay Omni quarterly grants equal to the City hotel occupancy tax and 1% City sales tax received in the previous quarter (capped at \$37 million over the course of the program), plus, without any cap or limitation, the state hotel occupancy tax and sales tax rebated to the City because, as provided by state law, the hotel is located within 1,000 feet of a convention center and is located on property owned by the City. In the event that the City tax rates are lowered, the City will pay Omni the difference between what Omni received and what Omni would have received without the change in rates. In the event that the City does not receive the anticipated state taxes because of a change in rates or the law, the City will pay Omni an amount equal to 25% of the difference. In both instances, the unpaid difference will carry interest at 14% per annum until fully paid.

Under the Amended 380 Agreement, the City will pay all of the above incentive grants plus the following:

- For the first 5 years after the project is completed, the City will also pay Omni annual grants equal to the real property tax revenue received by the City from condominium units that are owned by Omni and remain unsold, unleased or otherwise uninhabited. Any condominium unit that is sold or rented within the first 5 years will be fully taxable from the point of sale or lease. All of the condominium units, regardless of whether they are sold or rented, will be fully taxable after 5 years.

- In years 11-15, the City will also pay Omni quarterly grants equal to the hotel occupancy taxes that the City receives from the hotel plus the real and personal property taxes that the City receives from the hotel and the hotel garage, but excluding hotel sales taxes.

- In years 16-18, the City will also pay Omni quarterly grants equal to the hotel occupancy taxes that the City receives from the hotel, but excluding real and personal property taxes from the hotel and hotel garage and also excluding hotel sales taxes.

The Amended 380 Agreement provides for a cap of \$89 million in gross dollars, which takes into account the fact that Omni will not be receiving the majority of the additional grants for at least 10 years after the project is completed (i.e. the time value of money). Once this cap is reached (and assuming Omni has received all grants based on state-rebated taxes for the first 10 years), the Amended 380 Agreement will expire, regardless of the year in which that cap is reached. Based on all information received by the City, the City has confirmed that the difference in the cost of the project between what Omni will have to pay to complete the project and what Omni would pay in the commercially reasonable course of its business to complete the project is approximately \$49 million, net present value. The grants paid by the City to Omni under this Agreement are intended to fill that financial gap. Based on projections reviewed by the City's financial advisors, the City does not believe that aggregate grants paid under this Agreement will be as high as this capped amount. Rather, the purpose of the cap is to protect the City from paying higher-than-anticipated grants to Omni should the project's performance exceed anticipated projections.

- Lease-Based Grants. The City will still pay Omni an annual grant equal to the amount of rent paid to the City on the hotel property, which will be owned by the City for at least 10 years following the hotel's completion, less \$10,000. Thereafter, Omni will have an option to purchase the property at fair market value and the City will have a put option to require Omni to purchase the property at the same price. Omni will own the hotel and the hotel garage at all times. The condominiums will also be privately owned.

- Sale-Based Grant. Upon Omni's exercise of its option to purchase the property on which the project is constructed or the City's exercise of its put option to require Omni to purchase the property, the City will still pay Omni a one-time grant equal to the purchase price, less \$1 million.

In addition, the City will still waive development-related fees for the project, as specified in the Amended 380 Agreement. The City Council previously nominated this project for designation as a state enterprise project.

A Tax Abatement Agreement providing for a 10-year abatement on the hotel and hotel garage real and personal property, executed contemporaneously with the Original 380 Agreement, will be amended pursuant to a separate M&C in order to ensure that Omni's commitments under that Tax Abatement Agreement are consistent with those in the Amended 380 Agreement (e.g. commitments for overall construction spending and construction spending with Fort Worth companies and Fort Worth M/WBE companies). The Room Block Agreement, Ground Lease, Catering Agreement and License Agreement, all of which were executed contemporaneously with the Original 380 Agreement, will remain in full force and effect.

It is anticipated that construction on the project will begin in the summer of 2006 and that the project will be completed in the 4th quarter of 2008/1st quarter of 2009.

The Omni Convention Center Hotel will be located in COUNCIL DISTRICT 9, and will serve all Council Districts.

#### **FISCAL INFORMATION/CERTIFICATION:**

The Finance Director certifies that upon approval of the above recommendations and adoption of the attached appropriation ordinances, funds will be available in the current capital budget, as appropriated, of the Specially Funded Capital Projects Fund. The unreserved designated fund balance of the Culture and Tourism Fund will be \$14,305,306 after this appropriation.

#### **TO Fund/Account/Centers**

3) GG04 538070 0246000

\$2,300,000.00

#### **FROM Fund/Account/Centers**

4) GG04 538070 0246000

\$2,300,000.00

4. 5) C291 472004 251050022480 \$2,300,000.00

5) C291 5391020 251050022480 \$2,300,000.00

---

<b><u>Submitted for City Manager's Office by:</u></b>	Joe Paniagua (6191)
<b><u>Originating Department Head:</u></b>	Tom Higgins (6192)
<b><u>Additional Information Contact:</u></b>	Peter Vaky (7601)

---